



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

THE NATURE OF PROCEEDINGS IN CONTEMPT IN
PATENT CAUSES.

THE SITUATION.

A PERMANENT injunction has been entered in a patent suit prohibiting the manufacture, use and sale of the patented device by the defendant. The defendant, however, continues to sell the devices it has on hand on the advice of counsel, in disregard of the permanent injunction.

The plaintiff discovers the situation. He moves to have the defendant put in contempt of court. On the hearing upon the order to show cause why the defendant should not be put into contempt, the question is raised concerning the intent to commit acts which are in violation of the injunction. The defendant claims that there was no willful intent, that the proceeding is in its essence a criminal one, and that intent is necessary on the part of the defendant in order for it to be held in contempt.

THE QUESTION.

Is intent necessary to hold the defendant guilty of contempt? Is it a criminal or civil proceeding? Must proof other than the violation of the injunction be made? Is the advice of counsel to the defendant a defense? Is the wilful nature of the defense of any interest?

THE LAW.

In *Gompers v. Bucks Stove & Range Co.*¹ it was held that a proceeding, instituted by an aggrieved party to punish the other party for *contempt for affirmatively violating an injunction* in the same action in which the injunction order was issued, and praying for damages and costs, *is a civil proceeding in contempt*, and is part of the main action, and the court cannot punish the contempt by imprisonment for a definite term; the *only punishment is by fine measured by the pecuniary injury sustained*.

The *Gompers* case is precisely like the case in question. In

¹ 221 U. S. 418.

both cases the plaintiff instituted proceedings for contempt by reason of a violation of the injunction in the same action in which the injunction had been issued and in both cases the injunctions prohibited the doing of certain acts, as distinguished from requiring the performance of certain acts.

As Mr. Justice Lamar says in the Gompers case:²

"The only possible remedial relief for such disobedience would have been to impose a fine for the use of complainant, measured in some degree by the pecuniary injury caused by the act of disobedience."

The Supreme Court held that the proceeding was not criminal, but civil. It reversed the judgments of the lower court and dismissed the contempt proceedings because criminal sentences had been imposed in a civil proceeding. The reversal was without prejudice to proper proceedings for contempt.

Criminal contempt, punishable by jail and fine, is used to prohibit continuance of acts, civil contempt to punish acts already committed. "If it is for civil contempt the punishment is remedial, and for the benefit of the complainant."³

PRESENT CASE CIVIL CONTEMPT: MOTIVE NOT IMPORTANT.

The proceeding is civil in this instance. As was held in the Supreme Court, *the intent was of no consequence and need not be proved*. The fact of violation, which has already been found, is the only important factor.

For instance, in an infringement suit of a patent it is not necessary to prove that the defendant intended to infringe, but only that he did infringe. That is all that is necessary in a civil contempt like the one in question.

The Court of Appeals of the Sixth Circuit has followed the Supreme Court of the United States. It has held, that such a violation of an injunction is punishable by a civil proceeding in contempt and that the fine imposed should go to the plaintiff. The intent was of no importance.

In *Proudfit Loose Leaf Company v. Kalamazoo Loose Leaf Binder Company* (Circuit Court of Appeals, Sixth Circuit, Sept. 15, 1915),⁴ a court adjudged defendants in an infringe-

² p. 444.

³ 221 U. S. 441.

⁴ 144 C. C. A. 418, 230 Fed. 120.

ment suit guilty of contempt for violation of an injunction, and awarded one-half the fines imposed to complainant as reimbursement for its damages, costs and expenses. It was held *that, in so far as the order was for the benefit of complainant, it was civil*, but as to the remainder of the fines it was of a criminal nature, and that, where the opinion of the court indicated that it did not intend to find defendants guilty of a willful and contumacious disregard of its authority, upon a writ of error to review the order generally, the criminal portion of the judgment should be reversed, but *in so far as it was remedial it should be affirmed*.

The above cases in the Supreme Court of the United States and in the Court of Appeals for the Sixth Circuit materially alter the rule in *Bullock Electric & Mfg. Co. v. Westinghouse Electric & Mfg. Co.*⁶ The rule announced in the latter case is no longer the law. The late Mr. Justice Lurton who delivered the opinion in the latter case, when a Circuit Judge in 1904, was a member of the court and concurred in the opinion delivered by the Supreme Court of the United States in May, 1911, modifying the former rule.⁶

The specific question in this case was again settled by the Court of Appeals of the Second Circuit in January, 1918, where it held that a proceeding in a civil suit, instituted by an order requiring the defendant to show cause why it should not be punished for *contempt for violation of an injunction* previously issued therein, *was a civil* and not a criminal contempt.⁷

The contempt in this case is a civil proceeding; and not a criminal proceeding. Consequently the proof of violation of the injunction only is essential. Intent is of no importance. A contempt proceeding for doing an act which has been prohibited by an injunction involves punishment by fine for the benefit of the plaintiff and is a civil proceeding.

H. A. Toulmin, Jr.

DAYTON, OHIO.

⁶ 63 C. C. A. 607, 129 Fed. 105.

^{*} See *Gompers v. Bucks Stove and Range Co.*, *supra*.

⁷ *Bradstreet Co. v. Bradstreet's Collection Bureau*, 162 C. C. A. 156, 249 Fed. 958